

Appl. No. 10/782,806  
In re Van Der Meulen, J.  
Reply to Office Action of Feb. 9, 2006

**REMARKS/ARGUMENTS**

The Examiner is thanked for the Official Action dated February 9, 2006. This request for reconsideration is intended to be fully responsive thereto.

Claims 1, 7 and 8 were rejected under 35 U.S.C. §102(b) as being anticipated by Kuijpers et al. (USP 3,595,119). The applicant respectfully disagrees.

Regarding claim 1: The Examiner erroneously alleges that Kuijpers discloses a set of clave blocks having substantially equal exterior dimensions but different volumes of the open cavities formed therewithin. By contrast to the Examiner's allegations, Kuijpers teaches a xylophone-like sound producing unit including a set of resonator assemblies 1-5. Each of the resonator assemblies 1-5 includes a resonator 6 and a sound plate 7 that are struck by a plastic, wooden, or rubber mallet. In other words, one of ordinary skill in the musical art would not interpret the xylophone-like unit with the clave block, which does not have the sound plate.

Furthermore, the resonators 6 of Kuijpers have all of the same the same structural size (see column 1, lines 6-10 and 48-51). As disclosed and clearly shown in Figs. 1-4 of Kuijpers, the resonators 6 have not only the same length and width, but also the same thickness, thus the same volumes of the cavity within the resonators. As clearly disclosed by Kuijpers, the individual resonators have substantially the same length and also the same width so that a mass production of these resonator boxes is possible independently of what musical pitch is attempted

Appl. No. 10/782,806  
In re Van Der Meulen, J.  
Reply to Office Action of Feb. 9, 2006

(see column 2, lines 59-63). In other words, the resonators 6 of Kuijpers have substantially equal not only exterior dimensions, but also interior dimensions, including a volume of the cavity within the resonators, and, contrary to the present invention, the musical pitch (or tone) of the resonators of Kuijpers is not defined by the volume of the cavity within the resonators.

As further described by Kuijpers, the musical pitch of the resonator is attained by means of the construction of the corresponding sound plate and the application of the tuning openings designed differently in adaptation to the sound plate whereby the tuning openings can be made subsequently without difficulties and in fact at easily accessible places of the resonator box so that a reliable and effective tuning of the musical instrument is possible (see column 2, lines 59-70). In other words, the resonators 6 are manufactured of identical exterior and interior dimensions, and the resonator assemblies of Kuijpers are tuned after the manufacturing of the resonators 6 by cutting the tuning openings of different sizes therein.

Contrary to Kuijpers, the present invention as recited in claim 1 provides the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Therefore, the applied document, *i.e.*, the '119 patent to Kuijpers, does not meet the standard of anticipation.

In the event that the Examiner maintains this rejection of claim 1 in a future written communication, the Applicant kindly requests the Examiner to point to a specific place (column, line) in the '119 patent where Kuijpers discloses the recited set of clave blocks having substantially different volumes of the open cavities therewithin so as to generate different musical tones.

Appl. No. 10/782,806  
In re Van Der Meulen, J.  
Reply to Office Action of Feb. 9, 2006

Accordingly, claims 1, 7 and 8 define the present invention over Kuijpers.

Further regarding claim 7: in addition to the above arguments regarding patentability of claim 1, Kuijpers fails to disclose the set of clave blocks having the bodies of different volumes having different thickness of the solid material. As indicated above, the resonators of Kuijpers have all of the same the same structural size (see column 1, lines 6-10 and 48-51, and Figs. 1, 3 and 4), including the thickness. Therefore, the rejection of claim 7 under 35 U.S.C. 102(b) over Kuijpers is improper.

Claims 2 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kuijpers. The applicant respectfully disagrees.

As argued above regarding patentability of claim 1, Kuijpers fails to disclose the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Claims 2 and 3 introduce additional limitations further defining the present invention over Kuijpers.

Moreover, MPEP § 2143.01 requires that there must be some suggestion or motivation, either in the prior art references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine teachings of the prior art. However, the Examiner fails to prove as to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of the prior art. More specifically, Kuijpers lacks any suggestion or motivation to limit the number of resonator assemblies of the xylophone-like

Appl. No. 10/782,806  
In re Van Der Meulen, J.  
Reply to Office Action of Feb. 9, 2006

sound producing unit to three.

Therefore, the rejection of claims 2 and 3 under 35 U.S.C. 103(a) over Kuijpers is improper.

Claims 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kuijpers in view of Cohen et al. (USP 4,898,061). The applicant respectfully disagrees.


As argued above regarding patentability of claim 1, Kuijpers fails to disclose the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Thus, even if the combination of and modification of Kuijpers and Cohen suggested by the Examiner could be made, the resulting musical instrument still would lack the set of clave blocks having equal exterior dimensions and different volumes so as to generate different musical tones. Claims 4-6 introduce additional limitations further defining the present invention over Kuijpers in view of Cohen.

Therefore, the rejection of claims 4-6 under 35 U.S.C. 103(a) is improper.

It is respectfully submitted that claims 1-8 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

Appl. No. 10/782,806  
In re Van Der Meulen, J.  
Reply to Office Action of Feb. 9, 2006

Respectfully submitted:  
Berenato, White & Stavish

By:   
Matthew Stavish  
Reg. N° 36,286

6550 Rock Spring Drive, Suite 240  
Bethesda, Maryland 20817  
Tel. (301) 896-0600  
Fax (301) 896-0607